

Industrial Stormwater General Permit Initiative Work Group Meeting – September 29, 2008

WORK GROUP ATTENDEES

Bill Moore	Washington Department of Ecology	bmoo461@Ecology.wa.gov
Jeff Killelea	Washington Department of Ecology	jkil461@Ecology.wa.gov
Ken Johnson	Weyerhaeuser, for the Association of Washington Business	ken.johnson@weyerhaeuser.com
Gary Smith	Independent Business Association	ibawa@isomedia.com
Sue Joerger	Puget Soundkeeper Alliance	sue@pugetsoundkeeper.org
Kevin Burrell	Environmental Coalition of South Seattle	kevin@ecoss.org
Marilyn Guthrie	Port of Seattle, for the WA Public Ports Assn	guthrie.m@portseattle.org
Heather Kibbey	City of Everett, for the Assn of WA Cities	hkibbey@ci.everett.wa.us
Cal Noling	StormwaterRx Consultants	caln@stormwaterx.com
Ross Dunning	Kennedy Jenks Consultants	rossdunning@kennedyjenks.com
Kate Snider	Floyd Snider (Facilitation)	kate.snider@floydsnider.com
Nick Spang	Floyd Snider (Facilitation)	nick.spang@floydsnider.com

PUBLIC ATTENDEES

Mel Oleson	Boeing	mel.oleson@boeing.com
Alan Sugino	Boeing	alan.k.sugino@boeing.com
Lincoln Loehr	Heller Ehrman	lincoln.loehr@hellerehrman.com
Rick Moore	Hart Crowser	rick.moore@hartcrowser.com
Katie Kolarich	Puget Soundkeeper Alliance	katie@pugetsoundkeeper.org
Bridget Baker-White	Smith & Lowney, PLLC with the Puget Soundkeeper Alliance	bridgetbw@igc.org
Brad Tower	Schnitzer Steel Industries	bhtower@towerltd.org
Lily Isenhardt	Parametrix	lisenhardt@parametrix.com

This meeting summary was prepared by Nick Spang and Kate Snider. It is based on notes and transcriptions of the flip charts used during the meeting to document the discussion. ***Concepts that will be useful to bring forward into potential recommendations for a new ISWGP are identified in bold italics.***

MEETING OBJECTIVES

This Work Group meeting focused on performance measures for the Industrial Stormwater General Permit (ISWGP). The intent of this meeting is for Work Group members to discuss the issue of how to protect water quality by establishing performance measures such as benchmarks and numeric effluent limits for permittees, and develop ideas that can be considered in future meetings for the development of permit recommendations for Ecology.

In addition, the Work Group will discuss recommendations for Ecology's upcoming legislative update on managing dischargers to Clean Water Act 303(d)-listed (impaired) water bodies.

Additionally, the Group will confirm the agendas for upcoming meetings.

ECOLOGY UPDATE ON THE OCTOBER 15TH REPORT TO THE LEGISLATURE ON DISCHARGERS TO IMPAIRED WATERS

Bill Moore provided an update on the upcoming report to the legislature concerning dischargers to impaired water bodies, as required by the Washington State Engrossed Senate Substitute Bill 6415, referred to as "6415." The intent of the report is to provide information to the Washington State Legislature regarding how numeric effluent limitations would be implemented for these dischargers. At the 9/8 Work Group meeting, Ecology shared draft options under consideration and received feedback.

Ecology is currently evaluating the available information on General Permittees affected by the Environmental Protection Agency's (EPA) updated list of 2008 dischargers to impaired waters, in order to determine how many businesses really are affected.

- As discussed in the 9/8 meeting, a reduced list of parameters will be used to define ISWGP permittees affected.
- The previous logic for sediment-based listings on the 303 (d) list is being revised relative to management of non-detects
- ***These filters for the 303 (d) list may significantly reduce the number of ISWGP permittees affected by the requirement for numeric effluent limitations.***

During the September 8 Work Group meeting, the Work Group supported Option 1 as presented by Ecology, with adjustments, for managing dischargers to impaired water bodies. With Option 1, permittees would establish site-specific water quality based numeric effluent limits using a simplified reasonable potential analysis. See the [September 8 meeting notes](#).

- Bill indicated that Ecology does not currently have the resources to implement Option 1, with or without adjustments, due to the requirement for Ecology staff time to work with each permittee during the development and implementation of site-specific decisions, and data-management follow through. Ecology currently has significant staffing constraints.
- ***It is recognized that Work Group discussion on the ISWGP implementation support structure could assist in determination of a solution.***
- A question was raised as to ***whether the ISWGP can be operated as a cash neutral program.*** Bill explained that Ecology collects permit fees but that the fees do not cover all of the costs of the program. One issue is that, as the program evolves, the fee structure remains constrained because it is regulated by statute, and is part of a larger

stormwater management program. There is a separate Ecology focus group evaluating permit fee structure.

- An important concern is that Option 1 moves the program away from the intent of general permits, set up to streamline implementation and costs for both the agency and permitted businesses. Small businesses can't take the costs associated with individual-type permits.
- ***The receiving water study requirement for boatyards is a parallel that could be used – basically those permittees move out of the General Boatyard Permit to individual conditions.***
- Small businesses are concerned that they are unfairly impacted by the permit system and that many of the proposed changes could drive small businesses to closing.
- ***One approach may be to look at concentration and mass of contaminants being discharged by permittees to trigger permit requirements. Concentration, by itself, is not a fair standard, but looking at overall mass could even the playing field for small businesses, by looking at the relative contributions those entities make to receiving water bodies.***

Ecology's report to the legislature is targeted for mid-October. It will likely define options and concerns, not a specific decision. The final decision will be informed by the Work Group process.

TECHNICAL BASIS FOR BENCHMARKS

Jeff Killelea presented information from the Ecology DMR database, including data from recent years. This work was following up on a Work Group request from the 9/8 meeting. The Work Group reviewed several queries made on sampling results relative to benchmarks by SIC code. Ecology will post a web-based tool on the Ecology website for the ISWGP Work Group and members of the public to run DMR data queries.

Overview of DMR data – DMR Submittal Rates and Concentrations Reported

- DMR compliance: 57 to 72% of permittees are submitting data.
 - The cause is either no collection of samples or no DMR submittal
 - Frequent entry of "no qualifying storm event" on their DMR
- In 2006, 50 percent of permittees submitting DMR reports were meeting benchmarks, and 50 percent were over their established benchmarks for certain parameters
- Medians typically below benchmarks
- SIC code evaluation shows significant fluctuation and variance by SIC code. Industry-specific pollutants can be identified generally.
- No major trends are apparent in looking at data so far, it appears that permittees are not getting better or worse at meeting benchmarks
 - Identifying trends will be very helpful for the group
 - ***Being able to cross-reference BMP usage with results would be very helpful, but can not be done with current data reported.***

Ecology Inspector Perspectives

Since the 9/8 meeting, Ecology surveyed their stormwater inspectors, to receive input about the performance of the ISWGP. Bill provided a summary report “2008 Survey of Ecology Inspection and Enforcement Staff”, which is available on the Ecology project website. Inspectors, when polled about the performance of the ISWGP in general reported:

- They don’t know how many businesses requiring coverage are unpermitted, but their assumption is that it is a fair amount
- Permittees are frustrated by the complexity of permit
- Inspectors desire a better common knowledge-base for inspectors
- Inspectors find it difficult to do enforcement under this permit

Work Group Discussion

- There is concern among the Work Group about the low rate of DMR submittals. Is late reporting is not counted? Are businesses not submitting DMRs due to permit uncertainty?
- Ecology should check how many permittees submit a report stating “no qualifying storm event.” ***Requirements about the qualifying storm event could be relaxed or better supported to assure sampling.***
- Also potentially interesting are the concentrations reported for parameters that typically have medians below benchmarks. A look at the data shows that there are no new clear trends in the data since the 6415 report. There are likely site-specific trends, showing level 2 and 3 Best Management Practice (BMP) effects, but not industry-wide. It would be worth looking further into fluctuations and variations by SIC code.
- ***Could Ecology can supply a list of the top ten SIC codes that generally have samples with concentrations above benchmark values?*** Conclusions from the 6415 report are likely still accurate, but ***perhaps there are subsets of low hanging fruit that can be fixed first.***
- Tetrattech had a report for California, which requires DMRs once per year, demonstrating that compliance is in the 80th percentile.
- After reviewing data, members of the Work Group talked about the differences in the means and medians for the different SIC codes in the data, and how the Work Group should look harder at the data. Some Work Group members suggested that this information points to the ***need to evaluate the data more closely and carefully before lowering benchmarks.***
- The Work Group discussed how it is important to discuss the economic impact of benchmarks on small businesses and that the ***DMR data can help Ecology evaluate whether there are outliers or specific areas of concern to lower average concentrations in discharges without lowering benchmarks overall.***
- The Work Group discussed how, theoretically, Ecology could ***review data on facilities with BMP improvements regarding trends in meeting benchmarks.*** That information

is currently not reported, and can not be determined with a database query. Puget Soundkeeper information on follow up from settlements or litigations may help.

- While Ecology notes permit problems, businesses fail to respond. ***Evaluate opportunity for municipalities to assist Ecology with permit compliance.***
- In looking at the data there may be a story of disproportionate contribution by high level dischargers. Ecology needs to look at data to identify site specific trends.
- ***The Work Group agreed that significant gains in compliance could be made with a good implementation support structure.*** The small business perspective is that there are too many rules overall and that the carrot approach is more effective than stick approach.
- There is a general perception that Facilities do not understand the permit, how it is supposed to work and what is expected.
- Setting benchmarks too low can cause Ecology to lose ground with small businesses. ***The permit should be less complex, with clear requirements, and "ruthlessly" enforced. There should be no excuse to not have a SWPPP or not submit data. Until there is real enforcement there will not be better compliance. Key is getting the businesses under permit.***
- Many suggested that compliance could be significantly improved. What is the consequence when DMRs are not submitted? ***Consistent notification and follow-up is important. A simple phone call and efforts to ensure continuity between staff understanding of requirements can make huge improvements in how many permittees respond.***
- Right now small businesses need a consultant to be in compliance, but there should be a pathway that doesn't require hiring a consultant.
- ***There is general agreement that consistent and real enforcement – including tracking, phonecalls, reminders and clear understanding of Ecology consequences would level the playing field, reduce potential for businesses to game the system, and it would assist landlords.***

Determination of Benchmark Values

Bill provided general background about determination of benchmark values, and associated requirements of 6415. Benchmarks can be water quality criteria based requirements, based on end-of-pipe concentrations and site-specific determination of potential to exceed numeric standards in the receiving water. Or, benchmarks can be technology based (AKART) – in which permittees implement BMPs/treatment technologies to improve water quality, and presumption is that if implementing AKART level BMPs, compliance will be met.

6415 requires Ecology to perform an analysis of reasonable potential for permit requirements to exceed receiving water body requirements. If it is determined that the technology-based benchmarks have a reasonable potential to exceed water quality criteria, then numeric effluent limits shall be implemented.

The Work Group discussed the determination of benchmark values, and evaluation of reasonable potential to exceed water quality criteria:

- Benchmarks and monitoring have been performed since 2002.

- A logical process was used by Ecology in 2002 to set benchmarks, but some are not well founded. Ecology has received significant comments on determination of benchmarks, science to support. Relationship between benchmarks and water quality criteria is difficult – several benchmark parameters such as total zinc, oil and grease do not have associated water quality criteria.
- Turbidity is difficult to implement or evaluate, as it is a visual standard. ***Recommendation that permit regulate total settleable solids (TSS) instead.***
- ***Recommend that mass balance be taken better into account in addition to regulation of concentrations. Permittees could be held to different standards based on units of flow and mass being discharged, as protection of receiving waters ties to the mass of contaminant discharged.***
- ***In the long term, Ecology could consider implementing a waste load allocation type system. Theoretically, that could also fit into a trading system amongst businesses.***
- ***Consider “tiering” permit requirements, applying different requirements to businesses based on business type and discharge volume. A tiered approach could produce a win-win situation by making compliance easier for small businesses, and focusing Ecology enforcement resources on the areas where attention and assistance will result in largest effect to water quality. Focus on the primary problems. Variables to consider in defining tiers include: acreage; Discharge Volume and Flow Rate; SIC code; Reasonable potential to pollute.***
 - ***Small volume dischargers, within certain SIC codes, could be regulated on the basis of prescriptive BMPs only. If those small volume dischargers apply the appropriate BMPs, then presume they are in compliance. Could consider self-certification for small volume dischargers, or tracking and technical assistance by organizations or individuals other than Ecology.***
 - ***Larger volume dischargers could be held to more stringent requirements including chemical monitoring.***
 - ***Basing tiers on flow would incentivize reducing discharge volume in order to move to a lower tier (through increasing site cover, water reuse, etc.). Creating categories based on receiving water bodies and East vs. West-side locations could produce a better permit without making it more complicated. Different categories of general permittees could have different BMPs and benchmarks as well as monitoring requirements that are different.***
- Ecology will likely do a “reasonable potential to exceed” evaluation of the effectiveness of the current benchmark and adaptive management permit requirements
 - A key problem issue is that the data and inspector information shows that many businesses are not permitted, or are not meeting permit requirements
 - If there was a higher level of consistency of businesses meeting the permit requirements, how would that affect “reasonable potential to exceed”
- As part of the issuance of a new permit, Ecology plans to do a “reasonable potential to exceed evaluation” on the proposed revised permit requirements. This will evaluate:
 - Discharge concentrations

- Discharge volumes
- Receiving water conditions and dilution
- Evaluation could address anticipated permit compliance

Setting Benchmark Values

The draft 2007 ISWGP used median values to determine benchmark levels for certain metals. Significant concern was expressed regarding this proposal. The current permit uses a variety of methods.

In re-writing the permit, Ecology is favoring water quality-based benchmarks – benchmarks likely to meet water quality criteria in receiving waters based on results of “what if” reasonable potential to exceed evaluation. This approach is believed to be more reasonable than setting benchmarks based on data regarding performance, as the DMR data can not be linked to an understanding of BMP application, etc.

Work Group discussion:

- Additional evaluation of the performance data is recommended to assist in re-evaluating benchmarks.
- ***In Georgia, effluent limits are based on size of discharge compared to the receiving water body size.***
- ***Could consider setting different benchmarks per receiving water body***

PROCESS FORWARD, PROPOSED “WORK PLAN”

The group discussed the process for moving from discussion to the ability to put together clear recommendations for Ecology. There is significant anxiety regarding the timing and expectations of the Work Group process and lack of clarity regarding how recommendations will be formed.

- Kate described her expectations that the topic focused discussion planned for the next three meetings would define concepts or potential recommendations that could be moved forward for consideration. These potential recommendations will be clearly highlighted in meeting notes.
- Because the topics are inter-related, it is hard to expect that the Work Group could reach final, comprehensive recommendations until they have all been discussed.
- The January meeting is expected to consolidate and document recommendations, based on a compilation of the potential recommendation concepts from previous meetings, prepared by Floyd|Snider.
- It was acknowledged that one January meeting is optimistic for this work. The Group requested that Floyd|Snider poll the Work Group members to determine interest and availability for a second meeting in January.
- The Group asked Ecology to clarify the likely process and schedule to issue the next permit, with incorporation of Work Group recommendations.
- The Group would also like information on the expected schedule for Ecology to perform the “reasonable potential to exceed” evaluation, and the ability for Work Group review of that evaluation.

The proposed “Work Plan” was reviewed that defines the topics for the upcoming meetings. The Work Plan generally meets with Work Group approval, with the acknowledgement that the December meeting agenda is extremely aggressive. The November and December dates on the Work Plan handout were reversed, and need to be corrected.

- Coordination with Municipalities for enforcement should be added as a topic to the December meeting.

ACTION ITEMS AND NEXT STEPS

- Prep for next meeting – October 17 re: Enforcement, Compliance and Adaptive Management
 - Ecology: describe the current enforcement process for the Work Group. Provide examples/insight regarding Level 3 responses.
 - Kevin: provide an ERP overview.
 - Jeff and Cal: look for examples from other states
- Ecology clarify process and schedule to issue the next permit, with incorporation of Work Group recommendations
- Ecology provide expected schedule to perform the “reasonable potential to exceed” evaluation, and the ability for Work Group review of that evaluation.
- Acknowledge and define constraints to the process from RCW 90.48.555